

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

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4 Martinez Aytch,

5 Plaintiff,

6 v.

7 Bed Bath & Beyond,

8 Defendant.

Case No. 2:22-cv-02016-JAD-BNW

Order

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10 Plaintiff is proceeding *pro se* under 28 U.S.C. § 1915 and moved to proceed *in forma*  
11 *pauperis*. ECF No. 1. Plaintiff also submitted a complaint. ECF No. 1-1.

12 **I. In Forma Pauperis Application.**

13 Plaintiff filed the application required by § 1915(a). ECF No. 1. Plaintiff demonstrated an  
14 inability to prepay fees and costs or to give security for them. Accordingly, his request to proceed  
15 *in forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The Court will now review  
16 Plaintiff's complaint.

17 **II. Screening**

18 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the  
19 complaint under § 1915(e). Federal courts are given the authority to dismiss a case if the action is  
20 legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks  
21 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When  
22 a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the  
23 complaint with directions for curing its deficiencies, unless it is clear from the face of the  
24 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70  
25 F.3d 1103, 1106 (9th Cir. 1995).  
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1 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a  
2 complaint for failure to state a claim upon which relief can be granted. A properly pled complaint  
3 must provide a short and plain statement of the claim showing that the pleader is entitled to relief.  
4 Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule  
5 8 does not require detailed factual allegations, it demands “more than labels and conclusions” or a  
6 “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
7 (2009). The court must accept as true all well-pled factual allegations contained in the complaint,  
8 but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679. Mere  
9 recitals of the elements of a cause of action, supported only by conclusory allegations, do not  
10 suffice. *Id.* at 678. Additionally, where the claims in the complaint have not crossed the line from  
11 conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570. *Pro se*  
12 complaints are held to less stringent standards than pleadings drafted by lawyers. *Hebbe v. Pliler*,  
13 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal construction of *pro se* pleadings is  
14 required after *Twombly* and *Iqbal*).

### 15 **III. Analysis**

16 Plaintiff alleges that Bed Bath & Beyond failed to follow Occupational Safety and Health  
17 Act (OSHA) regulations, resulting in his injuries. As explained below, Plaintiff (who is a private  
18 individual) does not have the right to assert an OSHA violation as a claim. To the extent Plaintiff  
19 would like to assert a negligence claim against Bed Bath & Beyond, he must first establish that  
20 this Court has diversity jurisdiction. As a result, this Court will dismiss the complaint with leave  
21 to amend.

#### 22 **A. There is No Private Right of Action for OSHA Violations**

23 OSHA requires every employer to furnish its employees with “a place of employment  
24 which [is] free from recognized hazards that are causing or are likely to cause death or serious  
25 physical harm to [its] employees.” 29 U.S.C. § 654. To accomplish Congress’s goal, OSHA  
26 created two remedies that permit the Secretary of Labor, “proceeding before an administrative  
27 agency, (1) to obtain abatement orders requiring employers to correct unsafe working conditions  
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1 and (2) to impose civil penalties on an employer maintaining any unsafe working condition.”  
 2 *Atlas Roofing Co. v. Occupational Safety and Health Rev. Comm’n*, 430 U.S. 442, 445 (1977).

3 Pursuant to OSHA, “[e]mployees have been granted specific rights in the investigatory  
 4 and rule-making stages of the Act, including the right to . . . request that the Secretary [of Labor]  
 5 conduct a workplace inspection when employees suspect that a violation has occurred.” *Donovan*  
 6 *v. Occupational Safety and Health Rev. Comm’n*, 713 F.2d 918, 926 (2d Cir. 1983); *accord*  
 7 *Donovan v. Local 962, Int’l Chem. Workers Union*, 748 F.2d 1470 (11th Cir. 1984).

8 But “[n]owhere in the language of the Act, its legislative history, or in the statutory  
 9 declaration of purpose and policy in the Act itself is there the slightest implication that Congress  
 10 considered OSHA creating a private right of action for violation of its terms.” *Jeter v. St. Regis*  
 11 *Paper Co.*, 507 F.2d 973, 976 (5th Cir. 1975); *see also Am. Fed’n of Gov’t Emps., AFL-CIO v.*  
 12 *Rumsfeld*, 321 F.3d 139, 143–44 (D.C. Cir. 2003) (citing cases). Since OSHA does not create a  
 13 private right of action, Plaintiff has not stated a cognizable claim upon which relief may be  
 14 granted.

15 **B. Plaintiff Must Demonstrate Subject Matter Jurisdiction If He Intends to**  
 16 **Assert a Negligence Claim**

17 In addition to federal question jurisdiction, federal district courts have original jurisdiction  
 18 over civil actions in diversity cases “where the matter in controversy exceeds the sum or value of  
 19 \$75,000” and where the matter is between “citizens of different States.” 28 U.S.C. § 1332(a).  
 20 “Section 1332 requires complete diversity of citizenship; each of the plaintiffs must be a citizen  
 21 of a different state than each of the defendants.” *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061,  
 22 1067 (9th Cir. 2001).

23 Here, Plaintiff asserts that he is a citizen of Nevada and that Bed Bath & Beyond is  
 24 incorporated under the laws of Nevada and has its principal place of business in Nevada. Based  
 25 on these facts, diversity jurisdiction does not exist.

26 Plaintiff is advised that if he files an amended complaint, the original complaint (ECF No.  
 27 1-1) no longer serves any function in this case. The Court cannot refer to a prior pleading or to  
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1 other documents to make Plaintiff's amended complaint complete. The amended complaint must  
2 be complete in and of itself without reference to prior pleadings or to other documents.

3 **IV. CONCLUSION**

4 **IT IS THEREFORE ORDERED** that plaintiff's application for leave to proceed *in*  
5 *forma pauperis* (ECF No. 1) is GRANTED. Plaintiff is permitted to maintain this action to  
6 conclusion without prepaying fees or costs or giving security for them.

7 **IT IS FURTHER ORDERED** that the Clerk of Court must detach and separately file  
8 Plaintiff's complaint (ECF No. 1-1).

9 **IT IS FURTHER ORDERED** that Plaintiff's complaint is dismissed without prejudice  
10 and with leave to amend. **If Plaintiff chooses to file an amended complaint, he must do so by**  
11 **January 15, 2023 or this Court will recommend that his case be dismissed.**

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13 DATED: December 12, 2022

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15 BREND A WEKSLER  
16 UNITED STATES MAGISTRATE JUDGE  
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